

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)

Implementation of Section 273(d)(5))
of the Communications Act of 1934,)
as amended by the Telecommunications)
Act of 1996 -- Dispute Resolution)
Regarding Equipment Standards)

GC Docket No. 96-42

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**COMMENTS OF CORNING INCORPORATED IN RESPONSE TO
NOTICE OF PROPOSED RULEMAKING**

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SUMMARY

Corning urges the Commission to adopt the proposed consensus-based, ANSI-style dispute resolution process described in Attachment A as the "default" procedure for use in resolving standards-related disputes arising under Section 271(d)(4) of the Communications Act, in lieu of a binding arbitration procedure of the sort described in the Commission's notice.

While binding arbitration may be useful in resolving contractual disputes, an arbitration process of the sort proposed is ill-suited in several respects to satisfy the underlying purposes and express requirements of Section 273(d)(5). Such a procedure does not adequately take into account the broad impact of standards-related disputes on industry participants other than the non-accredited standards development organization (NASDO) and the participating party who invokes the dispute resolution process. In addition, given the highly technical character of such disputes, it is likely to be exceedingly difficult, if not impossible, to identify a single individual who is both a disinterested "neutral" and sufficiently expert to serve as an arbitrator. Finally, the extremely tight 30-day deadline established for dispute resolution under Section 273(d)(5) makes effective arbitration of highly technical matters practically impossible.

Corning believes that its proposed "accelerated consensus" procedure, which utilizes the existing resources and

expertise of ANSI-accredited standards development organizations (SDOs) avoids these potential pitfalls and would be more effective in resolving disputes within the prescribed period, without significantly impairing the efficiency, timeliness, and technical quality of the NASDO's activity. By referring disputes to SDOs that are accredited by ANSI to develop standards for the relevant class of products, the proposed procedure ensures that the dispute is handled by a panel that is open, balanced, and that has substantial expertise in the particular area of technology in which the dispute arises. In addition, use of the "accelerated consensus" procedure -- which provides that the relevant SDO engineering committee's sole responsibility is to determine whether or not a consensus exists in favor of the NASDO's proposed standard or requirement -- will facilitate the timely resolution of disputes, in a manner consistent with the purposes and requirements of the statute.

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Corning Incorporated ("Corning"), by its attorneys, submits the following comments in response to the Notice of Proposed Rulemaking ("NPRM") adopted by the Commission in the above-captioned proceeding.¹

I. INTRODUCTION

As a leading supplier of optical fiber and a variety of related products which lie at the cutting edge of technological innovation in the rapidly evolving global telecommunications marketplace, Corning has a vital interest in the manner in which industry standards and generic requirements for such products are developed and implemented. Following entry of the AT&T Consent Decree in 1982 and the ensuing breakup of the integrated Bell

¹ Notice of Proposed Rulemaking, GC Docket No. 96-42, In the Matter of Implementation of Section 273(d)(5) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 -- Dispute Resolution Regarding Equipment Standards, FCC 96-87, released March 5, 1996, 61 Fed. Reg. 9966 (March 12, 1996).

System in 1984, the work of developing U.S. industry standards for telecommunications equipment and related products increasingly has been undertaken through standards development organizations ("SDOs") accredited by the American National Standards Institute ("ANSI"). In Corning's experience, the open, non-discriminatory, consensus-based standardization process which ANSI-accredited SDOs are required to utilize, in order to maintain their accreditation, has served the industry and consumers well, providing a basis for increased competition and innovation in telecommunications equipment and service markets. Indeed, the more open, competition-friendly standardization environment which emerged in the years following the AT&T divestiture has been a major factor driving the emergence of a highly-competitive independent telecommunications equipment industry in the United States.

In order to ensure that the substantial benefits resulting from the use of an open, ANSI-style process for the development of standards and related activities continue to be realized, Corning was an active participant in the legislative debate and in the industry discussions which led to the adoption of Section 273(d) of the Telecommunications Act of 1996. As the Commission's notice observes, this new section of the Communications Act "sets forth procedures to be followed by non-accredited standards development organizations ["NASDOs"] that set industry-wide standards and requirements for manufacturing

telecommunications equipment."² Among other things, the provisions of Section 273(d)(4) require all NASDOs engaged in such activities to "issue a public invitation to interested industry parties to fund and participate in such efforts on a reasonable and non-discriminatory basis, administered in such a manner as not to unreasonably exclude any interested industry party."³ As the Commission has observed, the open, ANSI-like procedure prescribed in this section of the statute is applicable to Bell Communications Research, Inc. ("Bellcore"), as well as any other entity that is engaged in the establishment of industry-wide⁴ standards or "generic requirements" and that does not fall within the statutory definition of an "accredited standards development organization."⁵

The requirements specified in Section 273(d)(4) also require the NASDO to attempt to agree with the other participating parties on a "mutually satisfactory dispute resolution process" to be utilized in the event of a disagreement

² NPRM at ¶ 1.

³ 47 U.S.C. § 273(d)(4)(A)(ii).

⁴ The term "industry-wide" is defined in the statute to include "activities funded by or performed on behalf of local exchange carriers for use in providing wireline telephone exchange service whose combined total of deployed access lines in the United States constitutes at least 30 percent of all access lines deployed by telecommunications carriers in the United States as of the date of enactment of the Telecommunications Act of 1996." See 47 U.S.C. § 273(d)(8)(C).

⁵ See NPRM at ¶ 1, n.2, citing 47 C.F.R. § 273(d)(8)(E); H.R. Conf. Rep. No. 230, 104th Cong., 2nd Sess. 39 (1996) ["House Conference Report"].

between any participating party and the subject NASDO.⁶ If such an agreement is not reached, a participating party may utilize an alternate dispute resolution procedure, which is to be established by the Commission pursuant to Section 273(d)(5). The statute further provides that while the Commission is obligated to prescribe the "default" procedure to be used where the parties to a dispute do not agree to their own dispute resolution procedure, "[t]he Commission shall not establish itself as a party to the dispute resolution process."⁷

In considering alternative approaches to fulfilling its obligations under Section 271(d)(5) of the Communications Act, Corning believes it is important for the Commission to bear in mind that 1) the alternate procedure can only be invoked in cases where the parties have not agreed to their own dispute resolution process, 2) the Commission's role must be strictly limited in accordance with the statute, 3) the alternate dispute resolution process must permit a participating party to resolve its dispute with the NASDO "in an open, nondiscriminatory, and unbiased fashion," and 4) the Commission prescribed procedure must provide for resolution of the controversy "within 30 days after the filing of such dispute."⁸ In light of all of these factors, Corning offers the following comments in response to the "binding arbitration" proposal described in the Commission's notice, and

⁶ 47 U.S.C. § 273(d)(4)(A)(v).

⁷ 47 U.S.C. § 273(d)(5).

⁸ Id.

submits for consideration its own proposal for an alternate procedure which seeks to utilize the open, consensus-based processes, industry experience, and technical expertise of the accredited SDOs as a basis for resolving disputes between individual participants and NASDOs in a manner consistent with the stated purposes and express requirements of the statute.

II. PROPOSED REGULATIONS

A. Binding Arbitration Proposal

In its notice, the Commission specifically acknowledges that the "intended purpose" of the alternate dispute resolution process which is to be established pursuant to Section 273(d)(5) is to "enable all interested parties to influence the final resolution of the dispute without significantly impairing the efficiency, timeliness, and technical quality of the activity."⁹ While Corning agrees with the Commission's observation that generally-speaking, binding arbitration may often be "less costly and time consuming" than traditional dispute resolution procedures (e.g., a formal trial) or other frequently-cited alternative dispute resolution procedures (e.g., mediation, conciliation, mini-trials),¹⁰ an arbitration process of the sort described in the Commission's notice is ill-suited in several respects to satisfy the underlying purposes and express requirements of Section 273(d)(5).

⁹ NPRM at ¶ 3, n.4, citing House Conference Report at 39.

¹⁰ See NPRM at ¶¶ 4-5.

As an initial matter, it should be noted that any disputes that may arise in the course of a NASDO's establishment of industry-wide standard or "generic requirements" pursuant to Section 273(d)(4) of the Communications Act will necessarily have an industry-wide impact -- that is, the resolution of the dispute will likely affect the entire industry, not just the two parties engaged in the dispute. While binding arbitration may be a satisfactory means of resolving controversies (e.g., contract disputes) which affect a limited number of parties, the "default" procedure adopted for resolution of disputes of the sort addressed under Section 271(d)(5) should take into account the broad impact of such disputes on industry participants other than the NASDO and the particular participating party who invokes the dispute resolution process. As the discussion below indicates, Corning believes that the alternate procedure it has developed would be more effective in resolving controversies arising under Section 273(d)(4) in a manner which gives due consideration to their effect on the industry as a whole.

In addition, the technical nature of disputes relating to the establishment of standards or generic requirements for increasingly complex telecommunications equipment and related products sets them apart from the typical contract dispute or other controversies which might be resolved through a compromise which essentially "splits the difference" between the disputants' positions. In standards-related disputes, there often may be only one "right" answer to the issue which is being debated.

The highly technical character of such cases clearly places added weight on the ability of the decision-maker to understand and correctly analyze the complex technical arguments and data presented by the disputants. It is likely to be exceedingly difficult, if not impossible, to find a single individual who is both a disinterested "neutral" and sufficiently expert in the subject matter to serve as an arbitrator for disputes of this nature. This is particularly true given the extremely tight (30-day) statutory deadline established for dispute resolution under Section 273(d)(5), which allows little time for educating a decision-maker that is not already thoroughly familiar with the issue at hand. In this regard as well, Corning believes that a special "accelerated consensus" procedure which utilizes the existing resources and expertise of ANSI-accredited SDOs would be more effective in resolving disputes within the prescribed period without significantly impairing the "efficiency, timeliness, and technical quality" of the NASDO's activity.

B. Corning Proposal

In order to avoid the pitfalls associated with the use of a binding arbitration process of the sort outlined in the Commission's notice, as described above, Corning proposes that the Commission prescribe the use of an ANSI-like procedure which refers disputes relating to NASDO activities that fall within the scope of Section 273(d)(4) to appropriate, ANSI-accredited SDOs. Under the proposed procedure, disputes would be managed toward

resolution by the relevant SDO on an expedited basis, in a manner consistent with the open, consensus-based approach utilized by such organizations in their own standards development activities. A detailed description of Corning's alternate dispute resolution proposal is appended hereto. See Attachment A.

Corning believes that the adoption of an ANSI-based procedure such as that described in Attachment A would allow disputes under Section 273(d)(4) to be considered and resolved by a committee of experts who are well-qualified to assess the technical issues presented to them and make a collective determination as to whether to support or withhold support for the NASDO's position.¹¹ By referring disputes to SDOs that are accredited by ANSI to develop standards for the relevant class of products,¹² the proposed procedure ensures that the dispute is handled by a panel that is open, balanced, and that has substantial expertise in the particular area of technology in which the dispute arises.

It is important to note that the procedure proposed in Attachment A is not designed to compel a NASDO to include an arbitrated or mediated compromise of a disputed issue in its industry-wide standard or generic requirement. On the contrary, the proposed procedure, if pursued by the disputants to its

¹¹ As Attachment A indicates, the relevant SDO Engineering Committee ("EC") would make its determination by consensus, excluding those members affiliated with the NASDO or the Disagreeing Party ("DP"). See Paragraph 4.1.1, Attachment A.

¹² See Paragraph 3, Attachment A.

logical conclusion, will result in an industry consensus decision (excluding the disputants, of course) to support the NASDO's proposal or not to support it. If the decision is to support the NASDO's proposal, the proposal is included as a resolved issue in the NASDO's published industry-wide standard or generic requirement. On the other hand, if the decision is not to support the NASDO's proposal, the issue would appear on a special list of "industry-reviewed unresolved issues" and could not be included as a resolved issue in the published industry-wide standard or generic requirement.

Once an item appears on the industry-reviewed unresolved issues list it would remain open for final resolution by the relevant SDO or by a NASDO at some future date. In the meantime, carriers who need to specify an attribute affected by an issue included on this list are free to do so. However, it is Corning's hope and expectation that in making this decision, carriers would solicit the views of individual vendors, rather than relying solely on the opinion of a NASDO which is not supported broadly by the affected industry.

As the discussion above indicates, in order to meet the tight statutory deadline for the resolution of disputes under Section 273(d)(5), the proposed "accelerated consensus" procedure would merely require the relevant SDO committee to determine whether a consensus does or does not exist to accept the NASDO's proposed standard or generic requirement. By focusing the consensus decision in this manner, it should be possible to

resolve disputes within the statutory deadline, without significantly impairing the "efficiency, timeliness, and technical quality" of the NASDO's activity.

In short, Corning believes that its proposed procedure provides a basis for resolving disputes arising under Section 273(d)(4) of the Communications Act in a manner that is fully consistent with the purposes and requirements of Section 273(d)(5). The proposed "accelerated consensus" procedure builds on the extremely successful industry-led, ANSI-approved process that has evolved since divestiture as a mechanism for developing industry-wide standards in the increasingly competitive telecommunication equipment market.

Accordingly, Corning urges the Commission to prescribe a "default" procedure based on this established, highly-successful process to satisfy the requirements of Section 273(d)(5), in lieu of a new, untested binding arbitration procedure of the sort described in the Commission's notice. Corning has chosen to submit its proposal well in advance of the April 1 deadline in order to give other interested parties the opportunity to address the proposal in their initial comments, as well as on reply, and stands ready to work with the Commission and other interested parties to address any legitimate concerns which may be raised with respect to the details of an ANSI-based alternate dispute resolution procedure.

C. Complaints of Frivolous Disputes

1. Definition of a "Frivolous" Dispute

As the Commission's notice indicates, Section 273(d)(5) further provides that "[t]he Commission shall establish penalties to be assessed for delays caused by referral of frivolous disputes to the dispute resolution process."¹³ The statute itself does not explicitly define what constitutes a "frivolous dispute."

In considering the definition, penalties, and procedures to be used in dealing with "frivolous" disputes, it is important once again to keep in mind that the alternate dispute resolution process to be established by the Commission is intended for use only in cases where the NASDO and the other participating parties are unable to reach agreement on a procedure for disputes arising in the course of the subject activity. It is Corning's hope that the parties to NASDO standards and generic requirements activities will agree upon an appropriate ANSI-like process which affords the participants an opportunity to resolve disputes in an "open, non-discriminatory, and unbiased fashion," consistent with the purposes of Section 273(d)(4), and thereby obviate the need for any participating party to invoke the Commission-established "default" procedure. If this hope is realized, there will be no need for the Commission to make determinations as to whether a particular dispute is or is not "frivolous."

¹³ 47 U.S.C. § 273(d)(5).

To the extent that the alternate dispute resolution process is utilized, Corning generally agrees with the Commission's suggestion that the standard adopted in Section 1.52 of the FCC rules for determining whether pleadings filed with the Commission are "frivolous"¹⁴ may provide a useful starting point for such determinations in this context as well. Another potential source of guidance might be the antitrust jurisprudence relating to the so-called "sham" exception to the Noerr-Pennington doctrine. In explaining the scope of this exception to the general Noerr-Pennington rule, which provides immunity from antitrust prosecution for private parties exercising their First Amendment right to petition the government, the Supreme Court has adopted a two-part definition for what constitutes "sham" litigation.¹⁵ Under this test, in order to be deemed a "sham," the lawsuit must be "objectively baseless."¹⁶ The Supreme Court has cautioned that in applying its test courts must resist the temptation to view all unsuccessful suits as

¹⁴ Under Section 1.52, by signing the document in question, the filing party or its counsel is deemed to have certified that "to the best of his knowledge, information, and belief" there is "good ground to support" the filing and that "it is not interposed for delay." 47 C.F.R. § 1.52; Cf. Rule 11(b), Federal Rules of Civil Procedure.

¹⁵ See Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc., 113 S.Ct. 1920, 1928 (1993).

¹⁶ Id. Under the second prong of the Supreme Court's test, if the challenged suit is "objectively meritless," the Court must then examine the subjective motivation of the complainant to ascertain whether the baseless suit conceals an attempt to interfere with a competitor's business relationships through abuse of the governmental process. Id.

"baseless," recognizing that the losing party may have had a reasonable basis for filing the suit.¹⁷

Drawing on these sources, then, the Commission might choose to adopt a standard under which a participating party's referral of a dispute for resolution under the "default" procedure prescribed pursuant to Section 271(d)(5) would not be deemed "frivolous" so long as there is some legitimate basis for challenging the NASDO's determination with respect to a particular standard or generic requirement, and so long as the participating party's invocation of the alternate dispute resolution process is not imposed solely for purposes of delay.

2. Enforcement Procedures

At this point, Corning does not believe that it is necessary for the Commission to prescribe any elaborate new procedure for the handling of complaints of frivolous disputes. In order to assist the Commission in monitoring any use that may be made of the proposed alternate dispute resolution process described in Attachment A, it may be appropriate to require that a participating party seeking to invoke the "default" procedure (the Disagreeing Party or "DP") file a copy of its "dispute resolution report" with the Commission at the same time it files its report with the relevant SDO (or with ANSI, in cases where the relevant SDO cannot be identified).¹⁸ In addition, the

¹⁷ Id., n.5, citing Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 421-422 (1978).

¹⁸ See Paragraph 3.0, Attachment A.

Disagreeing Party could be required to file a copy of the determination reached by the relevant SDO Engineering Committee with the Commission, at the conclusion of the alternate dispute resolution process.

3. Penalties

Corning believes that the various penalties (e.g., monetary forfeitures) available to the Commission under Title V of the Communications Act¹⁹ should provide a more than adequate enforcement mechanism, to the extent that the filing of "frivolous" disputes becomes a problem. As the Commission's notice recognizes, if the participating party which invoked the alternate dispute resolution process in an apparently "frivolous" dispute is not an applicant for or holder of an FCC authorization, Section 503(b) of the Communications Act would require that a citation be issued and subsequent misconduct found prior to the assessment of a forfeiture under this section of the statute.²⁰

In Corning's view, it is unnecessary and would be inappropriate for the Commission to attempt to bar a party found to have invoked the Section 273(d)(5) process in a "frivolous" dispute from further participation in the standards and requirements development process.²¹ Imposition of such a sanction -- which could substantially impair the subject

¹⁹ 47 U.S.C. § 501 et seq.

²⁰ See NPRM at ¶ 8, citing 47 U.S.C. § 503(b)(5).

²¹ NPRM at ¶ 8.

company's ability to compete in the manufacture and marketing of products which are the subject of the relevant NASDO activities-- is neither required nor authorized by the statute.

D. Sunset of Requirements

Pursuant to Section 273(d)(6) of the Communications Act, the requirements imposed on NASDO standards and certification activities under Section 273(d)(4) will terminate for the relevant activity upon a determination by the Commission that there are "alternative sources of industry-wide standards, industry-wide generic requirements, or product certification for a particular class of telecommunications equipment or [CPE] available in the United States."²² Once the underlying substantive requirements are no longer in effect for a particular activity, the alternate dispute resolution procedure prescribed by the Commission may no longer be invoked by a participating party in connection with the subject activity, except to the extent that the NASDO and the participating party voluntarily agree to utilize such a procedure on an ongoing basis.

In determining whether there are in fact "alternative sources" of industry-wide standards, industry-wide generic requirements, or product certification for a particular class of equipment, Section 273(d)(6) provides that "[a]lternative sources shall be deemed to exist when such sources provide commercially viable alternatives that are providing such services to

²² 47 U.S.C. § 273(d)(6).

customers."²³ In making its decision as to whether an applicant seeking removal of the requirements of Section 273(d)(3) or (4) is entitled to relief, the Commission clearly will need to secure appropriate documentation from the applicant demonstrating that the alleged "alternative source" constitutes a "commercially viable alternative" that is providing "industry-wide" standards, "industry-wide" generic requirements, or product certifications.²⁴ While the Commission need not adopt specific rules with respect to the submission of requests for relief under Section 271(d)(6) at this time, Corning urges the Commission to make it clear that appropriate documentary evidence (e.g., procurement documents demonstrating the use of a competing standard or generic requirement developed by the alleged "alternative source") will be required in connection with any "sunset" applications that may be filed in the future.


²³ Id.

²⁴ For example, in evaluating the sufficiency of the documentation provided by an applicant, the Commission presumably will want to verify that the alternative source is in fact providing standards or generic requirements to customers on an "industry-wide" basis, consistent with the definition of this term adopted in Section 271(d)(8)(C) of the Communications Act.

CONCLUSION

For reasons described herein, Corning urges the Commission to adopt Corning's proposed ANSI-style dispute resolution process as the "default" procedure for use in resolving disputes arising under Section 271(d)(4) of the Communications Act.

Respectfully submitted,



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ATTACHMENT A

PROPOSED ALTERNATE DISPUTE RESOLUTION PROCESS

Introduction

Widespread, low-cost deployment of new technology is an objective of the Telecommunications Act of 1996. Network technology becomes most widely deployed when network operators can seamlessly interconnect equipment from a variety of manufacturers. Such interconnection is fostered through the adoption of industry-wide standards developed through a consensus-based, open process that allows all interested parties in the affected industry an opportunity to participate on a non-discriminatory basis in consensus development.

The traditional template for effective standards development is the consensus-based, open standards development process accredited by the American National Standards Institute ("ANSI"), the national institution responsible for maintaining the integrity of industry standards-making processes. However, in some instances, it is necessary to establish industry-wide standards or generic network requirements outside of the normal consensus-based, open process accredited by ANSI. Such situations might include pre-deployment analysis of new technology, integration of old technology with technology not yet deployed, or other unique situations where an industry consensus has not been developed through the ANSI-accredited process.

In such situations, a non-accredited standards development organization ("NASDO") may seek to promulgate standards or generic network requirements that effectively serve as industry-wide standards. Such standards or generic network requirements serve a necessary function and should be developed and used when necessary. Section 273 (d)(4) of the Telecommunications Act of 1996 recognizes these special situations and establishes an ANSI-like process for developing these standards and generic network requirements when they have industry-wide application. The term "industry-wide" has a specific meaning in this context. It includes instances where the standards or generic requirements are "funded by or performed on behalf of" local exchange carriers whose combined access lines constitute at least 30% of all access lines deployed nation-wide as of the date of enactment.

Since it is impossible to know beforehand whether a NASDO-promulgated standard or generic requirement will be utilized on an industry-wide basis, it is proposed that these ANSI-like procedures be used by NASDOs whenever they develop a standard or generic requirement, unless they undertake such activities on a proprietary basis under which all ownership rights and associated financial interests pass to local exchange carriers that account for less than 30% of the nation-wide access lines as of the date of enactment. As such, the carriers that possess the ownership rights, not the NASDO, would decide whether to allow other carriers to use the proprietary standard or generic requirement and exclusively reap any direct or indirect financial remuneration for such use.

The key to ensuring that the ANSI-like process prescribed for use by NASDOs in setting industry-wide standards or generic requirements is open and unbiased is the alternative dispute settlement process. The new law requires this reality, and, therefore, requires the Commission to establish such an alternate dispute resolution process within 90 days of enactment. The law further requires that the process permit resolution of disputes in an "open, non-discriminatory, and unbiased fashion." In light of this legal requirement, the process proposed below builds on the existing ANSI-accredited standards development processes, which have a proven record of openness and non-discrimination.

Description of Dispute Resolution Process

In the event that no dispute resolution process for a relevant Activity is agreed to by all the parties participating in an Activity, a party which disagrees with the NASDO may utilize the dispute resolution procedures established by the Commission, as described below.

1.0 The party which disagrees with the NASDO -- the disagreeing party ("DP") -- tenders a formal report of dispute to the NASDO. The report consists of a description of the disputed standard or requirement that has been proposed for publication by the NASDO, including data and facts in support of the DP's position.

2.0 The NASDO must formally acknowledge and respond to the DP's dispute report within 15 days by taking one of the following positions:

2.1 The NASDO may accept the DP's position and agree to remove the disputed proposed standard or requirement from the standard or generic requirement documentation or the list of resolved issues associated with the generic requirement documentation. The NASDO may elect to return the proposed standard or requirement to the List of Open Issues for disclosure exclusively between the NASDO and all other participating parties.

2.2 The NASDO may reject the DP's position, in which case the NASDO response must consist of the NASDO position and rationale for support of its proposed standard or requirement including supporting data and facts.

3.0 The DP may formally file a dispute notification report with the Administrator or Secretariat of the relevant accredited Standards Development Organization ("SDO") within 15 days of receiving the NASDO's response. In the event a relevant SDO cannot be identified, the notification will be made to ANSI for referral to the appropriate SDO. The dispute notification report filed by the DP must contain the original dispute report tendered by the DP to the NASDO, along with the formal NASDO acknowledgment and response to the DP pursuant to clause (2.2).

4.0 Upon receipt, the SDO Administrator or Secretariat must convey the dispute notification report to the relevant SDO Engineering Committee ("EC"), or equivalent body, to be resolved within 30 days of receipt from the disputing DP, pursuant to the procedure

described herein. The EC must base its resolution of the dispute upon the information provided within the dispute notification report as presented by the disputing DP and the NASDO. The allowable outcomes of the alternate dispute resolution process are:

4.1 The EC may accept the NASDO's proposed standard or requirement if and only if the NASDO has proven that: (a) the proposed standard or requirement brings significant value to the operability of Telecommunications Equipment or Customer Premises Equipment; (b) technical capability in the quantification of the proposed standard or requirement has been demonstrated by test data and analysis; and (c) the imposition of the proposed standard or requirement is commercially feasible and non-exclusionary.

4.1.1 The EC's determination is by consensus, excluding the EC members who may be Affiliated with either the NASDO or the disputing DP.

4.1.2 Upon EC acceptance, the NASDO is free to publish the proposed standard or requirement in the new standard or generic requirement documentation or the list of resolved issues associated with the generic requirements documentation for public dissemination.

4.2 The EC shall not accept the NASDO's proposed standard or requirement unless all of the conditions stipulated in clause (4.1) have been met by the NASDO.

4.2.1 If the EC declines to accept the proposed standard or generic requirement, the NASDO shall remove the disputed proposed standard or requirement from the standard or generic requirement draft documentation or the list of resolved issues associated with the generic requirements documentation.

4.2.2 In addition, the NASDO shall include the disputed proposed standard or requirement in a List of Industry-Reviewed Unresolved Issues to be circulated, in conjunction with the list of open issues, for disclosure between the NASDO and the participants in the activity.

5.0 The SDO will be compensated for the additional costs it incurs to administer this alternative dispute resolution process by the DP and the NASDO engaged in the disagreement. These parties will share equally in this cost.

Definitions

Activity - The establishment of a specific industry-wide standard or industry-wide generic requirement, or the modification of an existing industry-wide standard or industry-wide generic requirement, for Telecommunications Equipment or Customer Premises Equipment of a specific Product Class.

Affiliated - As defined in Section 3 of the Communications Act as amended.

Industry-wide - Activities funded by or performed on behalf of local exchange carriers for use in providing wireline telephone exchange service whose combined total of deployed access lines in the United States constitutes at least 30 percent of all access lines deployed by telecommunications carriers in the United States as of the date of enactment of the Telecommunications Act of 1996 (February 8, 1996). Under this definition, if a NASDO receives or is entitled to receive financial remuneration at any time or in any form, either directly or indirectly, in connection with its development of a standard or generic requirement for use in providing wireline telephone exchange service, by local exchange carriers whose combined total of deployed access lines exceeds the 30% threshold, the NASDO will be deemed to be engaged in such activities on an industry-wide basis.

NASDO - a non-accredited Standards Development Organization which establishes standards or generic requirements.

Open Issues List - A list of issues which have yet to be agreed upon by the NASDO and the other participating parties as a direct result of an Activity. The open issues list is to be distributed exclusively among the NASDO and the other participating parties, and is open to discussion and negotiation.

Product Class - To be defined by reference to an appropriate industry accepted classification scheme (e.g. the TIA glossary of terms and product classes).

Resolved Issues List - A list of issues which have been agreed upon by the NASDO and the other participating parties as the direct result of an Activity. The resolved issues list can be published and widely disseminated as a new standard or generic requirement document, or as an addendum to an existing document.

SDO - An ANSI accredited Standards Development Organization.

Telecommunication Equipment and Customer Premises Equipment - As defined in Section 3 of the Communications Act as amended.

Industry-Reviewed Unresolved Issues List - A list of proposed standards and requirements which have been disputed by a DP and subsequently denied as a viable standard or requirement by a relevant SDO EC via the alternate dispute resolution process. The industry-reviewed unresolved issues list may be circulated exclusively among the NASDO and the other participating parties.